SCA/898/2005 1/9 JUDGMENT

# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 898 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**KALUBHAI MAKNABHAI & 4 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 5 - Respondent(s)**

==========

**Appearance :**
MR PM DAVE for Petitioner(s) : 1 - 5.
MR PD BHATE ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR SUNIL S JOSHI for Respondent(s) : 3 - 4, 6,
NOTICE SERVED for Respondent(s) : 5,
==========

**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 30/08/2005**

**ORAL JUDGMENT**

1.Rule. Shri P.D.Bhate, learned AGP waives service of Rule on behalf of the respondent Nos.1 & 2

and Shri Sunil S. Joshi, learned advocate waives service of rule on behalf of the respondent No.3. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Revisional Authority i.e Joint Secretary (Appeal), Revenue Department, State of Gujarat dated August / 3.9.2003 passed in revision application No.14 of 12002 in dismissing the said revision application and confirming the orders passed by the Collector, Dahod dated 8.5.2002 passed in RTS Appeal No.6 of 2001 in allowing the said appeal and quashing and setting aside the order passed by the Deputy Collector, Dahod dated 7.2.2000.

3. Few facts are necessary for the purpose of determination of the present special civil application.

4.The dispute is with regard to old revenue survey No.118/1 situated at village Retiya, Taluka-Dahod and since 1926 the name of the forefather of the petitioners i.e. Kamla Punja was entered into the revenue record. It appears from the record that on death of Kamla Punja, the name of the father of the petitioners Maknabhai came to be mutated in the record of rights vide Entry No.150 dated 25.1.1935. On the death of said Makanbhai, the name of the petitioners came to be entered into vide Entry No.857 dated 1.2.1982 and the said entry also came to be certified. It appears from the record that there was survey by the Office of the City Survey in the year 1988 and the land bearing Revenue Survey No.118/1 was given new Survey No.236/5. It is the case of the petitioners that some mischief took place thereafter i.e in the year 1988 and the name of the respondent Nos.3 to 6 came to be mutated in the record of rights vide Entry No.949. It also appears from the record that the said entry No.949 came to be challenged by the petitioners by way of RTS Appeal No.23 of 1989 and the same

came to be dismissed. It is the case of the petitioners that earlier the aforesaid entry came to be confirmed by the Revisional Authorities on the ground that one Regular Civil Suit No.10 of 1988 was pending between the parties and the dispute was of the civil nature. It is the case of the petitioners that the said civil suit came to be dismissed by the learned Civil Judge (JD), Dahod on 9.2.1993 as the respondent No.3 to 6 - original plaintiffs were remaining absent and the said suit came to be dismissed considering the provisions of Order-9 Rule-8 of the Code of Civil Procedure. It appears from the record that thereafter on dismissal of the aforesaid suit, the petitioners approached the Deputy Collector, Dahod by way of RTS Appeal No.23 of 1989 challenging the very entry No.949 in favour of the respondent Nos.3 to 6 and the Deputy Collector, Dahod dismissed the said appeal by his order dated 26th March, 1999 by observing that if the petitioners are of the opinion that there was some mischief in the boundary at the time of promulgation, it will be

open for the petitioners to approach the competent authority, however, entry No.949 cannot be challenged. It is the case of the petitioners that thereafter the petitioners approached the Deputy Collector, Dahod for ratification of the record on the basis of the report submitted by the DILR and the Deputy Collector, Dahod dated 7.2.2000 directed to mutate the name of the petitioners by deleting the name of the respondent Nos.3 to 6. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dahod dated 7.2.2000 the respondents Nos.3 to 6 preferred the appeal before the Collector, Dahod being RTS Appeal No.6 of 2001 and the Collector, Dahod by its order dated 8.5.2002 allowed the said appeal No.6/2001 and quashed and set aside the order passed by the Deputy Collector, Dahod dated 7.2.2000. Being aggrieved and dissatisfied with the order passed by the Collector, Dahod dated 8.5.2002 passed in RTS Appeal No.6 of 2001, the petitioners preferred the Revision Application before the Secretary (Appeals), Revenue

Department, State of Gujarat being Revision Application No.14 of 2001 and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by his judgment and order dated August / 3.9.2005 dismissed the said revision application. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

5. Heard the learned advocates appearing on behalf of the parties.

6. Number of submissions have been made on behalf of the rival parties. However, the fact remains that when the Deputy Collector, Dahod passed the order on 7.2.2000 deleting the name of the respondents No.3 to 6 and the entry No.949, no opportunity of being heard was given to them and therefore, the same was in breach of principles of natural justice. Under the circumstances, without going into the merits of the case, the order passed by the Deputy Collector, Dahod dated 7.2.2000 is required to be quashed and set

aside. As such, the Collector, Dahod ought to have remanded the matter to the Deputy Collector for passing the order afresh after giving an opportunity to all the concerned parties including the respondent Nos.3 to 6 in whose favour the entry No.949 was existing. Under the circumstances, by quashing and setting aside the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated August / 3.9.2005 passed in Revision Application NO.14 of 2002, the order passed by the Collector, Dahod dated 8.5.2002 passed in RTS Appeal No.6 of 2001 and the order passed by the Deputy Collector, Dahod dated 7.2.2000, the matter requires to be remanded to the Deputy Collector for passing the appropriate order in accordance with law and on merits after giving an opportunity to ala the concerned parties.

7. For the reasons stated above, the petition succeeds partly. The judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated August / 3.9.2005 passed in Revision Application NO.14 of

2002, the order passed by the Collector, Dahod dated 8.5.2002 passed in RTS Appeal No.6 of 2001 and he order passed by the Deputy Collector, Dahod dated 7.2.2000 are hereby quashed and set aside and the matter is remanded to the Deputy Collector for passing the appropriate order in accordance with law and on merits after giving an opportunity to all the concerned parties i.e petitioners as well as the respondent Nos.3 to 6 herein. However, it goes without saying that it will be open for the parties to take all the contentions available to them including all the contentions on behalf of the respondent Nos.3 to 6 that once the survey is made and promulgation was made, the entry cannot be challenged and the same be dealt with by the Deputy Collector in accordance with law and on merits. It is, however, made clear that this Court has not expressed any opinion on merits of the matter and such an exercise is to be completed by the Deputy Collector, Dahod within a period of four months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent,

however, there will be no order as to costs.

[ M.R.Shah, J.]

=kailash=